the insured, pursuant to a provision in such policy, in consideration of $54.40 (the then cash value of the policy) paid him by the company, fully surrendered and delivered his policy to the company, and thereafter, and before his majority, died. The *bona fides* of the surrender was fully admitted in the case agreed. The infant's administrator claimed that the surrender was a voidable contract, and sought to avoid it and recover on the original contract of insurance which he affirmed. *Held*, that the plaintiff could not recover. *Pippen* v. *Mutual Benefit Life Ins. Co.* (1902), 130 N. C. 23, 40 S. E. Rep. 822, 57 L. R. A. 505.

The court held, that the infant's contract being voidable at his election, his voluntary surrender of the policy for its cash value amounted to a rescission. The infant was restored to his former status. A disaffirmance renders a contract void *ab initio* and cannot be retracted. The court cited, among other authorities,—*Lovell* v. *St. Louis Mut. L. Ins. Co.*, 111 U. S. 264, 28 L. ed. 423, 4 Sup. Ct. Rep. 390; *State* v. *Howard*, 88 N. C. 650; CLARK ON CONTRACTS, 244, 258; *McCarty* v. *Woodstock Iron Co.*, 92 Ala. 463, 12 L. R. A. 136, 8 So. Rep. 417. The infant clearly may disaffirm. *McCarthy* v. *Nicrosi*, 72 Ala. 332. Infant in this case disaffirmed a continuing obligation and the *bona fides* and reasonableness of the transaction were clear. Disaffirmance under such circumstances is final. *Johnson* v. *Northwestern Mut. L. Ins. Co.* (rehearing), 56 Minn. 372, 26 L. R. A. 189. But if there be doubt as to the *bona fides*, fairness or reasonableness of the transaction, it would seem the disaffirmance might be revoked. *O'Rourke* v. *John Hancock Mut. L. Ins. Co.*, supra, and cases there cited.

INSURANCE—STIPULATION THAT AGENT SHALL BE DEEMED AGENT OF APPLICANT — VALIDITY — PUBLIC POLICY. — An application for life insurance contained warranties of the truth of all statements therein. It stipulated that no information not contained in the application should be binding on the company, and that the medical examiner, selected and paid by the company, should be deemed, for the purposes of the transaction, the agent of the applicant. Action on the policy. The company defended on the ground that certain answers in the application were false. Plaintiff sought to prove that the questions had been truthfully answered, but that the answers were erroneously recorded by the medical examiner, and contended that notwithstanding the stipulation in the application, the examiner was in fact the agent of company employing him, and therefore the latter was chargeable with knowledge of the facts. *Held*: The agreement as to agency was void as against public policy. The company was chargeable with knowledge of the facts as given to their agent, notwithstanding the warranties. (Parker, C. J. and Gray, J. dissenting.) *Sternaman* v. *Metropolitan L. Ins. Co.* (1902), 170 N.Y. 13, 63 N. E. Rep. 1122.

Warranties of the truth of statements in the application will not protect the company, where the falsity of such statements as they go to the company, was due to the fraud, negligence or mistake of the agent in recording the answers: *Ins. Co.* v. *Wilkinson*, 13 Wall. 222; *Ins. Co.* v. *Mahone*, 21 Wall. 152; *Ins. Co.* v. *Harmer*, 2 Ohio St. 452; *Ins. Co.* v. *Shettler*, 38 Ill. 138; *Rowley* v. *Ins. Co.*, 36 N. Y. 550; *Clark* v. *Ins. Co.*, 40 N. H. 333; *New Jersey Mut. L. Ins. Co.* v. *Baker*, 94 U. S. 610; *Bawden* v. *Ins. Co.* C. A. [1892] 2 Q. B. 534. Another line of authorities hold on the contrary that an insurance company, like any other principal, may limit the powers of its agent, and if this limitation is brought to the notice of the applicant dealing with such agent it will bind him; that notice contained in the application which he signs is sufficient notice to the applicant even though he has not read it; that if he warrants the truth of statements in the application, he is

bound thereby, notwithstanding any information he may have given the agent. *N. Y. L. Ins. Co.* v. *Fletcher*, 117 U. S. 519; *Maier* v. *Fidel. L. Ins. Assn.* 24 C. C. A. 239; *Ins. Co.* v. *G. V. Bldg. Assn.* 183 U. S. 308; *Cleaver* v. *Traders' Ins. Co.* 65 Mich. 527; *Johnson* v. *Dak. F. & M. Ins. Co.* 45 N. W. 799; *Ins. Co.* v. *Franklin*, 40 N. J. Law 568; *Fitzmaurice* v. *Mut. L. Ins. Co.*, 84 Tex. 61. To evade the former rule in those jurisdictions in which it prevails, the insurance companies have adopted the expedient of having the applicant agree that the person filling out the application shall not be deemed to be the agent of the company. The effect and validity of such an agreement is the controlling question in the principal case. The court cites no direct authority for its holding that the stipulation is void as against public policy, and it is believed that the New York decisions do not afford a precedent. A similar state of facts was presented to the supreme court of that state in *O'Ferrall* v. *Metro. L. Ins. Co.*, 22 App. Div. 498, and it was held that the company, by its conduct, had *waived* the provision in regard to agency. Judge Hatch remarked, in the course of his opinion, however, that "the provision comes dangerously near to offending against the requirements of a sound public policy." See also *Whited* v. *Germania F. Ins. Co.* 76 N. Y. 419. Nothwithstanding these cases, the decision seems to be opposed to the decided weight of authority in New York. *Bernard* v. *Ins. Co.* (1897), 14 App. Div. 142; *Kaboc* v. *Ins. Co.*, 21. N. Y. St. Rep. 203; *Rohrback* v. *Germania F. Ins. Co.* 62 N. Y. 47; *Alexander* v. *G. F. Ins.*, 66 N. Y. 464; *Allen* v. *Ins. Co.* 123 N. Y. 6. The case finds more support in the decisions of other courts. Upon an identical state of facts the Illinois court reached the same result by a different method. It held that the question of agency was one of fact and open to inquiry regardless of the agreement. *Royal Neighbors* v. *Boman*, 177 Ill. 27 (1898), as did the supreme court of Tennessee; *K. of P.* v. *Cagbill*, 99 Tenn. 28. See also *F. & C. Co.* v. *Oehne* (1900), 94 Ill. App. 117; *LeBell* v. *Norwich U. Ins. Co.* (1900), 34 N. Brunswick 515. The weight of authority seems to be that any agreement that the agent taking the application shall be deemed to be the agent of the insured, will not have effect to change the fact: *Ins. Co.* v. *Sammons*, 110 Ill. 166; *Ins. Co.* v. *Bell*, 166 Ill. 400; *Rosencrans* v. *Ins. Co.* 66 Mo. App. 352; *Ins. Co.* v. *Cusick*, 109 Pa. St. 157; II AM. & ENG. ENCYC. LAW 334. Express statutes to this effect have been passed in several states. JOYCE ON INS. vol. 1, sec. 511. Cases holding to the contrary are: *Wood* v. *Ins. Co.*, 126 Mass. 316; *Ins. Co.* v. *Stevens*, 9 Allen 332; *F. Assn.* v. *Hogwood*, 82 Va. 342; *Hubbard* v. *Ins. Co.*, 80 Fed. 681; *Grace* v. *Ins. Co.*, 16 Blatch. 433: *Ins. Co.* v. *Murley*, 5 Ont. App. 290, and New York cases above. Some attempt has been made to distinguish between cases in which the agency stipulation first appeared in the *policy*, and those in which it was made a condition in the *application*. *Ins. Co.* v. *Myers*, 55 Miss. 500; *Mnfg. Co.* v. *Ins. Co.*, 2 So. Dak. 26; *Kanusal* v. *L. Assn.*, 31 Minn. 17. The matter is ignored in the great majority of cases, and no distinction is made. See New York and Massachusetts cited above.

LIMITATION OF ACTIONS—AMENDMENT OF PLEADINGS.—The plaintiff's petition in an action was fatally defective, because it did not recite a foreign statute under which the action was brought. To supply this defect an amendment, reciting the statute, was filed. The statute of limitations had run before the amendment was made but had not run when the petition was filed. *Held*, that the filing of petition and service of summons was a commencement of suit within the meaning of the statute of limitations. *Louisville and Nashville R. Co.* v. *Pointer's Adm'rs.* (1902), — Ky. —, 69 S. W. 1108.

The question was: When a petition fails to state a cause of action, does